

JAMES HELDMAN

IBLA 81-77

Decided June 29, 1982

Appeals from decision of the Montana State Office, Bureau of Land Management, declaring mining claims abandoned and void. M MC 24467 (SD) through M MC 24477 (SD).

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Evidence: Credibility -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold the Mining Claim

Where a preponderance of the evidence does not support a finding that all documents necessary to effectuate a filing under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), were timely filed, a decision declaring mining claims abandoned and void for failure to file timely the required documentation will be affirmed.

APPEARANCES: James Heldman, pro se.

## OPINION BY ADMINISTRATIVE JUDGE FRAZIER

James Heldman has appealed from the decision of the Montana State Office, Bureau of Land Management (BLM), dated September 25, 1980, which declared his White Monster mining claims M MC 24467 through M MC 24477 abandoned and void. 1/

The location notices recorded with BLM on June 4, 1979, indicated that the claims were located in March 1967. No affidavits of assessment work or notices of intention to hold these claims were received by October 22, 1979.

In his statement of reasons appellant contends that he forwarded the location notices, proof of labor, and notice of intent to hold the claims in a timely manner and they were stamped as being recorded and returned to him at his mill in Mountain City, Nevada. He states: "Due to the financial reorganization of my company, the documents are stored in my warehouse in Boise, Idaho, and won't be available to me before another year." 2/

He has also enclosed a statement from Mr. Jerry Muehl, Manager of the Silver State Mills, who states that he saw proof of labor and notices of intent to hold for White Monster claims #1-11 returned with the Bureau's recordation stamp and affirms that Mr. Heldman will be unable to show the documents because of "a bad warehousing situation."

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1/ BLM erroneously referred to claims M MC 6111 (SD) through M MC 6122 (SD) in their letter of Oct. 29, 1980, which acknowledged receipt of the notice of appeal. The record shows that appellant had previously recorded a group of White Monster lode and placer claims on Sept. 12, 1977. A filing of the location notices indicated that these claims were located between Feb. 28, 1967, and Mar. 25, 1969. These claims were assigned numbers M MC 6111 (SD) through M MC 6122 (SD) and M MC 6124 (SD) through M MC 6127 (SD). Evidence of annual assessment work was timely submitted for these claims in 1978, however, no affidavits of assessment work or notices of intention to hold these claims were received by Dec. 30, 1979, and BLM declared them abandoned and void in a decision dated Aug. 13, 1980.

Appellant did not appeal that decision. The records of these cases indicate that claims M MC 6111 through M MC 6122 are the same claims subsequently filed and assigned serial numbers M MC 24467 through M MC 2477.

2/ In response to our order of Mar. 24, 1982, which granted appellant 30 days to submit the document, appellant forwarded a copy of the 1979 affidavit of assessment which was filed Apr. 19, 1982, with the Lawrence County Register of Deeds, stating thereon that the original cannot be located.

[1] Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1976), requires the owner of an unpatented mining claim located prior to October 21, 1976, to file evidence of annual assessment work for the claim with BLM within the 3-year period following that date and prior to December 31 of each year thereafter. The corresponding Departmental regulation, 43 CFR 3833.2-1(a), reads:

The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Failure to do so is considered conclusively to constitute abandonment of the claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a).

[2] Pursuant to these requirements appellant was required to file evidence of annual assessment work or notice of intention to hold these claims on or before October 22, 1979. In view of appellant's allegations that he did file the documents timely, we consider whether BLM in fact received the documents. This Board has often noted the legal presumption of regularity which attends the official acts of public officers in the proper discharge of their official duties. See, e.g., Phillips Petroleum Co., 38 IBLA 344 (1978); Donald E. Jordan, 35 IBLA 290 (1978); A. G. Golden, 22 IBLA 261 (1975). This presumption is subject to rebuttal by probative evidence. L. E. Garrison, 52 IBLA 131 (1981).

There is no evidence in the record that the required documents were ever filed with BLM. Appellant has filed self-serving statements that the documents were filed enclosing the supporting statement of Mr. Jerry Muehl. Even after we afforded appellant a subsequent opportunity to file proof, as he alleged he could, that the documents were timely filed, he did not. We find that these statements fall far short of proving his allegations and does not show by a preponderance of the evidence that BLM received the required documents. Harwell Mining Co., 56 IBLA 236 (1981); cf. Bruce L. Baker, 55 IBLA 55 (1981); Bernard J. Braker, 54 IBLA 332 (1981).

In the absence of evidence that BLM did timely receive the necessary filings, BLM properly declared appellant's claims abandoned and void. Glenn D. Graham, 55 IBLA 39 (1981); Earl Kremiller, 55 IBLA 28 (1981). This Board has no authority to excuse lack of compliance with the statute or to afford relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); Glen J. McCrorey, 46 IBLA 355 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

